UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), Plaintiff, v. GENERAL MOTORS LLC, Defendant.	Case No. 4:19-cv-00420-BYP Hon. Benita Y. Pearson

DEFENDANT'S RULE 12(b)(6) MOTION TO DISMISS OR IN THE ALTERNATIVE, RULE 12(c) MOTION FOR JUDGMENT ON THE PLEADINGS

Defendant General Motors LLC ("Defendant" or "GM"), through its undersigned attorneys, respectfully moves this Court, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, or in the alternative, Rule 12(c) of the Federal Rules of Civil Procedure, to enter an Order granting its Motion thereby dismissing with prejudice the Complaint filed by Plaintiff the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America ("Plaintiff" or "UAW").

The UAW brought this lawsuit alleging that certain product allocation decisions announced by GM breached the parties' collective bargaining agreement ("CBA"). The Court should dismiss the Complaint because the CBA prescribes mandatory grievance arbitration procedures that apply to this dispute. Because the UAW has not (and cannot) allege that it exhausted those mandatory procedures, this lawsuit is not properly before the Court.

Moreover, although dismissal is appropriate solely based on the UAW's failure to exhaust the grievance arbitration procedure contained in the CBA, this is reinforced by

Paragraph 53 of the parties' CBA, which expressly prohibits the UAW from initiating or pressing any court proceedings when unresolved grievances regarding the same subject matter have been filed. Two grievances alleging the identical violation set forth in the complaint have been filed and remain open. Plaintiff's initiation and pursuit of the instant action in violation of Paragraph 53 reinforces and constitutes an independent reason that dismissal is appropriate in the instant case.

For these reasons and those set forth in the accompanying Memorandum of Law, the Court should dismiss the Complaint in its entirety with prejudice and award GM the attorneys' fees and costs that it has unnecessarily incurred in this action.

Dated: March 21, 2019

Respectfully submitted,

/s/ Allison N. Powers

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Attorneys for Defendant
General Motors LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (the UAW),

Plaintiff,

v.

GENERAL MOTORS LLC,

Defendant.

Case No. 4:19-cv-00420-BYP

Hon. Benita Y. Pearson

DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF ITS RULE 12(b)(6) MOTION TO DISMISS OR IN THE ALTERNATIVE, RULE 12(c) MOTION FOR JUDGMENT ON THE PLEADINGS

TABLE OF CONTENTS

TABLE OF AUTHORITIES CITED

Cases

Statutes

I. SUMMARY OF THE ARGUMENTS PRESENTED

This action is brought under § 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185, by Plaintiff International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the "UAW" or "Plaintiff"). The UAW alleges that Defendant General Motors LLC ("Defendant" or "GM") breached the parties' collective bargaining agreement (the "CBA"). Specifically, the UAW claims that certain product allocation decisions announced by GM – affecting GM facilities in Lordstown, Ohio, Baltimore (White Marsh), Maryland, and Warren, Michigan – violate a letter known as Document No. 13 ("Doc. 13"), which is part of the CBA. Doc. 13 provides that, during the CBA's term, GM "will not close, idle, nor partially or wholly . . . dispose of in any form, any plant, asset, or business unit of any type . . . constituting a bargaining unit under the Agreement" unless there are "conditions . . . that are beyond the control of the Company (i.e., market related volume decline, act of God)" and "could make compliance with this commitment impossible." Compl. ¶¶ 11–13, 19, 22.

The Court should dismiss the Complaint for two related, but independent reasons:

First, the Court should dismiss the Complaint because the UAW failed to exhaust the mandatory grievance arbitration procedures contained in the CBA.

Second, Paragraph 53 in the CBA specifically prohibits the UAW from initiating or pressing court proceedings while the parties' contractual dispute resolution procedures have not been exhausted. The UAW filed two grievances alleging the identical alleged violation set forth in the Complaint, which remain open. Therefore, the UAW has breached Paragraph 53 of the CBA by bringing this action, which is an independent reason the Complaint should be dismissed.

For these reasons and those set forth below, this Court should dismiss the Complaint pursuant to Rule 12(b)(6) or in the alternative, pursuant to Rule 12(c).

II. STATEMENT OF ISSUES TO BE DECIDED

1. Whether this lawsuit should be dismissed because the UAW failed to exhaust the CBA contractual grievance arbitration procedures, which is a prerequisite to stating a claim for breach of the CBA pursuant to § 301 of the LMRA?

2. Whether this lawsuit should be dismissed because the UAW has breached Paragraph 53 of the CBA, which states that the UAW cannot "initiate[]" or "press" any "court action" when an open grievance involves the same subject matter?

III. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

A. The Parties' Agreement

GM and the UAW are both parties to the CBA, which took effect on November 23, 2015 and remains in effect until September 14, 2019. *See* Compl. ¶¶ 9–10, Ex. A.

1. Mandatory Grievance Arbitration Procedures

The CBA includes a mandatory grievance arbitration procedure governing the resolution of CBA-based disputes. Paragraphs 28 to 45 of the CBA provide a multi-step grievance procedure, which starts at the local level, provides avenues for appeal to the national level, and concludes with arbitration before an impartial Umpire if the grievance process fails to resolve the dispute. Compl. Ex. A, ¶¶ 28–45, pp. 25–37. The grievance procedure culminates in arbitration before an impartial Umpire. *Id.*, ¶¶ 43–45, pp. 34–37. The grievance arbitration procedure also states that "*[a]ny issue involving the interpretation and/or the application of any term of this Agreement* may be initiated by either party" and "[u]pon failure of the parties to agree with respect to the correct interpretation or application of the Agreement to the issue, *it may then be appealed directly to the Umpire* as provided in Paragraph (43)." *Id.*, ¶ 55, p. 43 (emphasis added).

Paragraph 53 of the CBA provides that the grievance arbitration procedures set forth in the CBA are binding, final, and exclusive:

> There shall be no appeal from the Umpire's decision, which will be final and binding on the Union and its members, the employee or employees involved and the Corporation. The Union will discourage any attempt of its members, and will not encourage or cooperate with any of its members, in any appeal to any Court or Labor Board from a decision of the Umpire.

Id., ¶ 53, p. 42. Paragraph 53 also provides that neither the UAW, GM, nor any employees may file a lawsuit alleging a violation of the CBA if there is a grievance pending on the same subject matter:

> Neither the Corporation, nor the Union, nor any employee or group of employees, may initiate or cause to be initiated or press any court action claiming or alleging a violation of this Agreement or any local or other agreement amendatory or supplemental hereto, where such claim is also the subject matter of a grievance which is then open at any step of this grievance procedure.

Id.

2. <u>Management Rights</u>

Paragraph 8 of the CBA – contained in the "Recognition" section of the agreement – states that "the products to be manufactured, the location of the plants, the schedules of production, the methods, processes and means of manufacturing are solely and exclusively the responsibility of [GM]." *Id.*, ¶ 8, p. 13. Therefore, it remains the prerogative of GM, not the UAW, to decide what products to manufacture, the schedules for production, and how to manufacture them.

Document 16 of the CBA (*see id.*, at pp. 361–75) acknowledges a role the UAW can play during the earliest stages of the product development cycle, but expressly provides that "[t]he products manufactured and services delivered meet evolving customer preferences and demands at a competitive price." *Id.*, at p. 371.

3. Doc. 13 Provisions

GM and the UAW are parties to a letter agreement, which is titled "Doc. No. 13 – Plant Closing and Sale Moratorium." Doc. 13 provides as follows:

> As a result of your deep concern about job security in our negotiations and the many discussions which took place over it, this will confirm that during the term of the new Collective Bargaining Agreement, the Company will not close, idle, nor partially or wholly sell, spin-off, split-off, consolidate or otherwise dispose of in any form, any plant, asset, or business unit of any type, beyond those which have already been identified, constituting a bargaining unit under the Agreement.
>
> In making this commitment, it is understood that conditions may arise that are beyond the control of the Company, (i.e. market related volume decline, act of God), and could make compliance with this commitment impossible. Should such conditions occur, the Company will review both the conditions and their impact on a particular location with the Union.

Id., at p. 356.

B. GM's Product Allocation Announcements

On or about November 26, 2018, GM issued a statement in which it announced, among other things:

> **Increasing capacity utilization** – In the past four years, GM has refocused capital and resources to support the growth of its crossovers, SUVs and trucks, adding shifts and investing $6.6 billion in U.S. plants that have created or maintained 17,600 jobs. With changing customer preferences in the U.S. and in response to market-related volume declines in cars, future products will be allocated to fewer plants next year.
>
> Assembly plants that will be unallocated in 2019 include:
> − Oshawa Assembly in Oshawa, Ontario, Canada.
> − Detroit-Hamtramck Assembly in Detroit.
> − Lordstown Assembly in Warren, Ohio.
>
> Propulsion plants that will be unallocated in 2019 include:
> − Baltimore Operations in White Marsh, Maryland.
> − Warren Transmission Operations in Warren, Michigan.
>
> . . . .
>
> These manufacturing actions are expected to significantly increase capacity utilization. To further enhance business performance, GM will continue working

> to improve other manufacturing costs, productivity and the competitiveness of wages and benefits.

See Compl. ¶ 13; GM's Answer and Affirmative Defenses ("Answer"), Ex. 1. The following day, GM issued a second statement, which further stated, "[y]esterday's announcements support our ability to invest for future growth and position the company for long-term success and maintain and grow American jobs. Many of the U.S. workers impacted by these actions will have the opportunity to shift to other GM plants where we will need more employees to support growth in trucks, crossovers and SUVs." Answer, Ex. 2.

C. Grievances Regarding GM's Product Allocation Announcements

The UAW and/or UAW-affiliated local unions have filed two pending grievances against GM pursuant to the CBA, which both allege that GM's product allocation decisions violated Doc. 13 contained in the CBA. These grievances remain open and unresolved in the grievance arbitration procedure. Answer, ¶ 22

On December 4, 2018, the UAW and/or the UAW-affiliated local union in Lordstown, Ohio filed a grievance that charges GM with an alleged "direct violation of the GM-the UAW Agreement specifically . . . doc 13," alleges "GM has broken its commitment + failed to comply w/ the intent of the plant closing moratorium in [D]oc. 13," and demands that GM "continue production of the Chevy Cruze D2LC at the Lordstown complex." Answer, Ex. 3; *see also* Ex. A.

Similarly, on November 28, 2018, the UAW and/or the UAW-affiliated local union at the GM facility in Detroit-Hamtramck, Michigan, filed a grievance that likewise charges GM with an alleged "violation of Document 13 of NA" because "[management] has announced the idling of Detroit-Hamtramck" and "demands this plant stay active." Answer, Ex. 4; *see also* Ex. B.

Both of these grievances remain open and unresolved. Therefore, the UAW has not yet exhausted the CBA's grievance arbitration procedures.

IV. LEGAL STANDARDS

To withstand a Rule 12(b)(6)[1] motion to dismiss, a Complaint must contain sufficient factual matters to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). Moreover, when analyzing a Rule 12(b)(6) motion to dismiss, courts consider materials that "reiterate[] the contents of the complaint, [are] referred to in the complaint, or [are] central to the claims asserted." *Allied Mech. Servs., Inc. v. Local 337 of United Ass'n of Journeymen & Apprentices of Plumbing & Pipefitting Indus.*, 221 F.3d 1333 (6th Cir. 2000) (holding that grievance-related documents attached to Rule 12(b)(6) motion "that had not been attached to the complaint" were not matters "outside the pleadings," as "[t]he complaint specifically referred to [them], and these materials were central to [the] claim").

Rule 12(c) motions for judgment on the pleadings are reviewed using the same standard as for Rule 12(b)(6) motions. *Roger Miller Music, Inc. v. Sony/ATV Publ'g, LLC*, 477 F.3d 383, 389 (6th Cir. 2007). However, "[i]n ruling on a Rule 12(c) motion, the court considers all

[1] While there is a circuit split on the issue of whether the defense of failure to exhaust contractual grievance arbitration procedures should be considered under the standard of Rule 12(b)(1) or Rule 12(b)(6), the Sixth Circuit most often considers the issue pursuant to Rule 12(b)(6). *Compare Adamov v. U.S. Bank Nat'l Ass'n*, 726 F.3d 851, 855–57 (6th Cir. 2013) (concluding that "the question of administrative exhaustion is nonjurisdictional") *with Baumgart v. Stony Brook Children's Serv., P.C.*, 249 F. App'x 851, 852 (2d Cir. 2007) (affirming District Court's dismissal of complaint pursuant to Fed. R. Civ. P. 12(b)(1)). Although Sixth Circuit cases have found that the failure to exhaust contractual remedies warrants dismissal under Rule 12(b)(6), GM respectfully submits that such a failure divests the court of subject-matter jurisdiction and warrants dismissal under Rule 12(b)(1). In any event, courts uniformly find that the failure to exhaust the contractual grievance arbitration procedure warrants dismissal and/or judgment against the party that has alleged a breach of the collective bargaining agreement. *See, e.g.*, *Jarrel v. Bomag*, 728 F. Supp. 468, 475 (S.D. Ohio 1989) (granting judgment to defendant because plaintiff's grievance was pending in arbitration and plaintiff failed to show "circumstances which would excuse him from exhausting the remedies available to him under the CBA").

available pleadings, including the complaint and the answer," and "'[t]he court can also consider (1) any documents attached to, incorporated by, or referred to in the pleadings; (2) documents attached to the motion for judgment on the pleadings that are referred to in the complaint and are central to the plaintiff's allegations, even if not explicitly incorporated by reference; (3) public records; and (4) matters of which the court may take judicial notice.'" *Wood v. Lerner Sampson & Rothfuss*, No. 1:13CV1669, 2014 WL 4249785, at *4 (N.D. Ohio Aug. 27, 2014) (citation omitted).[2]

V. ARGUMENT

A. The Court Should Dismiss the UAW's Section 301 Claim Because the UAW Failed To Exhaust Required Grievance Arbitration Procedures.

Federal law strongly favors resolving disputes between unions and employers through their collectively bargained processes. *See United Steelworkers of Am. v. Am. Mfg. Co.*, 363 U.S. 564, 566 (1960) ("Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement.") (quoting 29 U.S.C. § 173(d)). Therefore, where a collective bargaining agreement provides for mandatory arbitration of a labor contract dispute, exhaustion of available contractual remedies is required and the failure to do so will foreclose a Section 301 action in federal court. *United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 37 (1987) ("The courts have jurisdiction to enforce collective-bargaining contracts; but where the contract provides grievance and arbitration procedures, those procedures

[2] As Exhibits A and B to this Motion, GM attached UAW's pending grievances pertaining to product unallocation announcements, which are central to allegations in the Complaint and the Court may appropriately consider on a Rule 12(b)(6) Motion. In conjunction with the filing of this Motion, GM has also filed an Answer and Affirmative Defenses in compliance with this Court's Standing Rules. UAW's pending grievances are also attached as exhibits to GM's Answer and Affirmative Defenses. Therefore, the Court may review or analyze GM's arguments herein under either Rule 12(b)(6) or Rule 12(c), which are reviewed under the same standard.

must first be exhausted and courts must order resort to the private settlement mechanisms without dealing with the merits of the dispute."); *see also Gateway Coal Co. v. United Mine Workers of Am.*, 414 U.S. 368, 377–78 (1974); *United Steelworkers of Am.*, 363 U.S. at 564; *United Steelworkers of Am. v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960). Indeed, the Supreme Court has made clear that when a CBA details a grievance procedure, "courts . . . have no business weighing the merits of the grievance, considering whether there is equity in a particular claim, or determining whether there is particular language in the written instrument which will support the claim." *United Steelworkers of Am.*, 363 U.S. at 568.

1. Exhaustion of Contractual Remedies Is Mandatory.

In the Sixth Circuit, courts regularly mandate the exhaustion of contractual remedies before a Section 301 action may be brought in federal court. *Indep. Fed., Inc. v. Armco Steel Co., LP*, 65 F.3d 492, 496 (6th Cir. 1995) ("[W]here a labor agreement mandates arbitration, courts *must* order resort to private settlement mechanisms without dealing with the merits of the dispute.") (internal quotation marks and citation omitted) (emphasis added); *Terwilliger v. Greyhound Lines, Inc.*, 882 F.2d 1033, 1034 (6th Cir. 1989) (finding state law claims were preempted by Section 301 and case should have been dismissed for plaintiff's failure to exhaust remedies available in CBA).

Because of this strong federal policy, there is a general presumption in favor of arbitrability of disputes over a CBA where, as here, that CBA contains broad arbitration clauses as part of its agreed upon contractual remedies. *AT&T Techs., Inc. v. Commc's Workers of Am.*, 475 U.S. 643, 649–50 (1986) ("[I]n deciding whether the parties have agreed to submit a particular grievance to arbitration, a court is not to rule on the potential merits of the underlying claims. Whether 'arguable' or not, indeed even if it appears to the court to be frivolous, the

union's claim that the employer has violated the collective-bargaining agreement is to be decided, not by the court asked to order arbitration, but as the parties have agreed, by the arbitrator."); *Warrior & Gulf Navigation Co.*, 363 U.S. at 582–83 ("An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute."); *United Steelworkers of Am. v. Mead Corp., Fine Paper Div.*, 21 F.3d 128, 131 (6th Cir. 1994) ("[W]here the agreement contains an arbitration clause, the court should apply a presumption of arbitrability, resolve any doubts in favor of arbitration, and should not deny an order to arbitrate 'unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute.'") (quoting *AT&T Techs., Inc.*, 475 U.S. at 650); *Commc'ns Workers of Am. v. Michigan Bell Tel. Co.*, 820 F.2d 189 (6th Cir. 1987) (same). Even if an arbitration clause is ambiguous – which it is not here – all doubts concerning the scope of arbitrability should be resolved strongly in favor of arbitration. *See supra*; *see also Int'l Union of Operating Eng'rs, Local 369 v. Office & Prof'l Emps. Union, Local 367*, 66 F.3d 325 (6th Cir. 1995).

2. <u>The Failure to Exhaust the CBA's Grievance Arbitration Procedures Requires Dismissal Of This Case As a Matter of Law.</u>

The alleged violation in this case involves the UAW's challenge to product allocation decisions announced on November 26, 2018. As noted above, Paragraph 8 of the CBA – contained in the CBA's "Recognition" section – vests exclusively in GM the right to determine "the products to be manufactured, the location of the plants, the schedules of production, [and] the methods, processes and means of manufacturing." Compl. Ex. A, ¶ 8, p. 13. Moreover, the Complaint alleges that GM's product allocation decisions violated Doc. 13 contained in the

CBA. Compl. ¶ 22. These claims involve the interpretation and application of provisions in the CBA, which makes them subject to the CBA's mandatory grievance arbitration procedures.

In short, the Complaint alleges violations that are subject to the CBA's mandatory contractual grievance arbitration procedures, and the UAW does not allege (because it cannot) that it exhausted the grievance arbitration procedures outlined in the CBA prior to filing this lawsuit.[3] As such, the UAW cannot maintain a Section 301 suit as a matter of law. For this reason alone, the Court should dismiss the Complaint in its entirety with prejudice.

B. Paragraph 53 of the CBA Prohibits the UAW from Pursuing Court Actions While Any Grievance Remains Open.

Paragraph 53 of the CBA also expressly prohibits the UAW from initiating or pressing any court proceedings when unresolved grievances regarding the same subject matter have been filed. Compl. Ex. A, ¶ 53, p. 42. It states that the UAW cannot "initiate or cause to be initiated or press any court action claiming or alleging a violation of this Agreement or any local or other agreement amendatory or supplemental hereto, where such claim is also the subject matter of a grievance which is then open at any step of this grievance procedure." *Id.*

[3] The instant case – challenging GM's product allocation decisions – involves Paragraph 8 of the CBA, which is part of the CBA's "Recognition" section, and expressly provides GM with the exclusive right to decide on "the products to be manufactured," among other things. Compl. Ex. A, ¶ 8, p. 13. Significantly, Paragraph 46 of the CBA specifically states that disputes involving the "Recognition" section are subject to and within the authority of arbitration (which, in the CBA, is heard by an Impartial Umpire). *See id.*, pp. 37–38. Moreover, the Complaint's alleged violation of Doc. 13 is likewise subject to the parties' grievance arbitration procedures, as reflected in the pending grievances that have already been filed challenging the same GM product allocation decisions announced on November 26, 2018. *See* Ex. A–B; Answer, Exs. 3–4. Nor is the parties' contractual dispute in this case listed among those that the CBA expressly excludes from the "Powers of the Umpire." Compl. Ex. A, ¶ 46, pp. 37–38. This precludes any reasonable argument that Plaintiff can pursue the instant case without exhausting the parties' final and binding grievance arbitration procedures. *See United Steelworkers of Am.*, 21 F.3d at 131 ("[W]here the agreement contains an arbitration clause, the court should apply a presumption of arbitrability, resolve any doubts in favor of arbitration, and should not deny an order to arbitrate 'unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute.'") (quotation omitted).

Here, the UAW has filed two grievances against GM – both of which remain pending – alleging a violation of Doc. 13 based on the November 2018 product unallocation announcements. *See* Exs. A–B; Answer Exs. 3–4. Therefore, the UAW has breached Paragraph 53 of the CBA by initiating and continuing to litigate this lawsuit while these grievances remain open. In this respect, the UAW's failure to abide by the procedures of Paragraph 53 constitutes a failure by the UAW to satisfy a condition precedent of the Agreement, thereby requiring the dismissal of the Complaint. *Jarrel v. Bomag*, 728 F. Supp. 468, 474–75 (S.D. Ohio 1989) (granting judgment to defendant because plaintiff's grievance was pending in arbitration and plaintiff failed to show "circumstances which would excuse him from exhausting the remedies available to him under the CBA"). For these additional reasons, the Court should dismiss the Complaint.

VI. CONCLUSION

For all of the reasons set forth above, the Court should grant GM's Motion thereby dismissing the UAW's Complaint in its entirety with prejudice.

Dated: March 21, 2019

Respectfully submitted,

/s/ Allison N. Powers

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Attorneys for Defendant
General Motors LLC

CERTIFICATE OF COMPLIANCE WITH MEET AND CONFER OBLIGATION

I hereby certify that on March 19, 2019, in compliance with the procedures and preferences of the Honorable Benita Y. Pearson, Defendant's counsel submitted a written request for dismissal of the Complaint to Plaintiff's counsel prior to filing Defendant's Motion to Dismiss and/or Motion for Judgment on the Pleadings. Following additional correspondence between the parties, Plaintiff's counsel refused to dismiss the Complaint. *See* Exhibit C. Defendant asserts that Plaintiff's position is incorrect and that the Complaint should be dismissed.

/s/ Allison N. Powers
Attorney for Defendant
General Motors LLC

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(f)

I hereby certify that the length of the Defendant's Memorandum of Points and Authorities in support of its Motion to Dismiss and/or Motion for Judgment on the Pleadings filed in the above-captioned Action, which, as of the date of this filing has not yet been assigned to a track, does not exceed twenty (20) pages as permitted by Local Rule 7.1(f).

/s/ Allison N. Powers
Attorney for Defendant
General Motors LLC

CERTIFICATE OF SERVICE

I hereby certify that on March 21, 2019, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Allison N. Powers
Attorney for Defendant
General Motors LLC

EXHIBIT A

Policy

EMPLOYEE GRIEVANCE COMPLEX No. 22206 C

Dept. Complex Date 12/4/18 Time 12:00 AM PM

Nature of Grievance: Charge mgt. w/ direct violation of The GM-UAW M/A specifically doc 10, doc 13, doc 16, doc 60, App K + App L but not limited To These. GM has broken it's commitments + Failed to comply w/ The intent of the plant closing Moratorium in doc 13.

Employee Print _____ Signed _____

GMIN (Required) _____ District No _____

Committeeman Print _____ Signed _____

Reported to _____ GMIN _____

Disposition: The union demands That GM honor it's commitment + continue Production of The Chevy Cruze D2LC AT The Lordstown Complex

Signed | Grievance Satisfactory Settled ☐ Yes ☐ No | Referred to:

Date _____ Time _____ AM PM

Disposition:

Signed | Grievance Satisfactory Settled ☐ Yes ☐ No | Referred to:

Date _____ Time _____ AM PM

Disposition:

Signed | Grievance Satisfactory Settled ☐ Yes ☐ No | Referred to:

Original – UAW Canary – Supervisor Blue – Labor Relations Pink – Employee

LT0002-C (rev. 0518)

CMS 394982

EXHIBIT B

GM0730 REV. 9/99

EMPLOYEE GRIEVANCE No.C 1098830

Dept. 80 Date 11-28-18 Time 7:55 A.M. / P.M.

Nature of Grievance Charge Mgt with violation of Document 13 of NA. Mgt has announced the idling of Detroit-Pamtrack. The Union demands this plant stay active.

Signed _____ SS# _____

Committeeman M. Kc Plant

Reported to Kelsey Firek Foreman

Disposition by Foreman Charge and demands denied.

11/28/18

Date _____

Grievance Satisfactorily Settled	Referred to
NO	1 1/2

EXHIBIT C

Morgan Lewis

Beth Herrington
Partner
+1.312.324.1445
beth.herrington@morganlewis.com

March 19, 2019

VIA EMAIL

Richard L. Stoper, Jr., Esquire
Goldstein Gragel LLC
1111 Superior Avenue, East
Suite 620
Cleveland, Ohio 44114
rstoper@ggcounsel.com

Re: *UAW v. General Motors LLC*; U.S. District Court, Northern District of Ohio; Case No. 4:19-cv-00420-BYP

Dear Mr. Stoper:

Pursuant to Judge Pearson's standing order, and for the reasons summarized below, Defendant General Motors LLC ("Defendant" or "GM") requests that the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America ("Plaintiff" or "UAW") voluntarily dismiss, with prejudice, the Complaint in the above-referenced Action. Should the UAW refuse to withdraw the Complaint, GM intends to file a Motion to Dismiss and/or for Judgment on the Pleadings.

Judge Pearson's order states that, in response to this request, opposing counsel "shall either agree to the request for dismissal or shall give explicit reasons in writing for refusing to do so." In either case, we request a response by 5:00 pm ET on Wednesday, March 20, 2019, because Defendant must respond to the complaint on or before Thursday, March 21, 2019.

The parties' collective bargaining agreement (the "CBA") prescribes mandatory grievance and arbitration procedures; grievances challenging the same GM actions and alleging the same CBA violation alleged in the complaint have been filed pursuant to those procedures; and the grievances remain open and the procedures have not been exhausted. Because these contractual procedures have not been exhausted, the above-captioned action must be dismissed.

Although the UAW must withdraw the Complaint solely based on the UAW's failure to exhaust the grievance arbitration procedure contained in the CBA, this is reinforced by Paragraph 53 of the CBA, which expressly prohibits the UAW from initiating or pressing any court proceedings when unresolved grievances regarding the same subject matter have been filed. Here, the UAW and/or UAW-affiliated local unions have filed two pending grievances against GM, which both allege that GM's product allocation decisions violated Doc. 13 contained in the CBA. These grievances remain open and unresolved in the grievance arbitration procedure. Therefore, the UAW's initiation and

pursuit of this Action in violation of Paragraph 53 reinforces and constitutes an independent reason that dismissal of the Complaint, with prejudice, is appropriate.

Based on the foregoing, GM respectfully requests the voluntary dismissal of the Complaint, with prejudice.

We respectfully await your response, which we request by 5:00 pm ET on Wednesday, March 20, 2019.

Sincerely,

Beth Herrington

c: Philip A. Miscimarra, Esq. (via email)
Allison N. Powers, Esq. (via email)
Joyce Goldstein, Esq. (via email)
Jeffrey D. Sodko, Esq. (via email)
William J. Karges, III, Esq. (via email)

Herrington, Beth

From: Richard L. Stoper Jr <rstoper@ggcounsel.com>
Sent: Wednesday, March 20, 2019 2:02 PM
To: Herrington, Beth
Cc: Miscimarra, Philip A.; Powers, Allison N.; Joyce Goldstein; jsodko@uaw.net; wkarges@uaw.net
Subject: RE: UAW v. General Motors LLC; U.S. District Court, NDOH; Case No. 4:19-cv-00420-BYP

[EXTERNAL EMAIL]
Ms. Herrington:

I am writing in response to your March 19, 2019 letter requesting that the International Union, UAW, voluntarily dismiss, with prejudice, the Complaint in the above-referenced action.

It is my understanding that this is the first time the Company has argued that Document 13 issues are within the powers of the umpire. If you could elaborate on the Company's position, it would help us provide a response. In addition, please provide me copies of the two grievances referenced in your letter. Please provide your response by the end of the day on Thursday, March 21. After I receive this information, I will consult with my client and provide you with a detailed response on or before Monday, March 25, 2019.

Richard L. Stoper, Jr.

Goldstein Gragel LLC
1111 Superior Avenue, East
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Cleveland, Ohio 44114
216-771-6633 ext. 3 (phone)
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rstoper@ggcounsel.com
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From: Morris, Rhoda [mailto:rhoda.morris@morganlewis.com]
Sent: Tuesday, March 19, 2019 2:55 PM
To: Richard L. Stoper Jr <rstoper@ggcounsel.com>
Cc: Miscimarra, Philip A. <philip.miscimarra@morganlewis.com>; Powers, Allison N. <allison.powers@morganlewis.com>; Joyce Goldstein <jgoldstein@ggcounsel.com>; jsodko@uaw.net; wkarges@uaw.net; Herrington, Beth <beth.herrington@morganlewis.com>
Subject: UAW v. General Motors LLC; U.S. District Court, NDOH; Case No. 4:19-cv-00420-BYP

Dear Mr. Stoper, please see the attached letter per Beth Herrington's request. Sincerely, Rhoda

Rhoda Morris
Legal Secretary
Morgan, Lewis & Bockius LLP
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Beth Herrington
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March 21, 2019

VIA EMAIL

Richard L. Stoper, Jr., Esquire
Goldstein Gragel LLC
1111 Superior Avenue, East
Suite 620
Cleveland, Ohio 44114
rstoper@ggcounsel.com

Re: *UAW v. General Motors LLC*; U.S. District Court, Northern District of Ohio; Case No. 4:19-cv-00420-BYP

Dear Mr. Stoper:

As explained more fully in my March 19, 2019 letter, GM requests that the UAW voluntarily dismiss the Complaint in the above-referenced action. The contractual grievance arbitration procedures in the parties' collective bargaining agreement ("CBA") have not been exhausted, grievances challenging the same GM actions and alleging the same CBA violations remain open, and CBA paragraph 53 expressly prohibits the UAW from initiating or pressing any court proceedings when open grievances have been filed regarding the same subject matter.

Your March 20 email asks that we "elaborate," requests copies of the two grievances filed by the UAW and/or UAW-affiliated local unions, and states that you will provide a response on or before March 25, which is four days after the deadline (which is today) for GM to file its response to the Complaint.

We believe your email fails to comply with Judge Pearson's Standing Order, which states that – in response to a party's written request for dismissal – opposing counsel "shall either agree to the request for dismissal or shall give explicit reasons in writing for refusing to do so." Nevertheless, we are providing the requested additional information and also providing copies of the two pending grievances against GM, wherein the UAW and/or UAW-affiliated local unions allege that GM's product allocation decisions violated Doc. 13 contained in the CBA. We do, however, request a written response by 4:00 pm today that conforms to the Standing Order; if we do not receive such a response, we will file a motion to dismiss and/or for judgment on the pleadings, as described in my March 19 letter.

The CBA's plain language demonstrates that disputes relating to Doc. 13 are subject to the CBA's grievance arbitration procedure and this case should not have been filed. Paragraph 8 of the CBA – contained in the CBA's "Recognition" section – vests exclusively in GM the right to determine "the

products to be manufactured, the location of the plants, the schedules of production, the methods, processes and means of manufacturing are solely and exclusively the responsibility of [GM]." Moreover, the Complaint alleges that GM's product allocation decisions violated Doc. 13 contained in the CBA. Compl. ¶ 22. These claims involve the interpretation and application of provisions in the CBA, which makes them subject to the CBA's mandatory grievance arbitration procedures.

In addition, Paragraph 53 of the CBA also expressly prohibits the UAW from initiating or pressing any court proceedings when unresolved grievances regarding the same subject matter have been filed. It states that the UAW cannot "initiate or cause to be initiated or press any court action claiming or alleging a violation of this Agreement or any local or other agreement amendatory or supplemental hereto, where such claim is also the subject matter of a grievance which is then open at any step of this grievance procedure." *Id.*

Here, the Union has filed at least two pending grievances against GM, both of which charge that GM violated Doc. 13 by making certain product allocation decisions. On December 4, 2018, the Union filed a grievance that charges GM with an alleged "direct violation of the GM-UAW NA specifically . . . doc 13," alleges "GM has broken it's [sic] commitment + failed to comply w/the intent of the plant closing moratorium in doc. 13," and demands that GM "continue production of the Chevy Cruze D2LC at the Lordstown Complex." *See* Exhibit 1. Similarly, on November 28, 2018, the Union filed a grievance which charges GM with an alleged "violation of Document 13 of NA" because "[management] has announced the idling of Detroit-Hamtramck" and "demands this plant stay active." *See* Exhibit 2.

Finally, the UAW previously alleged that GM violated Doc. 13 in the GM-UAW national agreement, the dispute was processed pursuant to the CBA's grievance arbitration procedure, and the Impartial Umpire held that the dispute was arbitrable. In August 1988, the UAW filed a grievance that charged that "the curtailment of the production of the Fiero automobile and the resultant layoff of employees assigned to that effort violated Document No. 13 entitled 'Plant Closing Moratorium.'" *See* Exhibit 3, p. 1. At that time, Document No. 13 stated that GM would not "close . . . any plant, constituting a bargaining unit under the [CBA]" with an exception that included certain "conditions beyond the control of the Corporation. . . ." *See* Exhibit 3, pp. 4-5. In the resulting arbitration, the Impartial Umpire held that the alleged violation of Doc. 13 was subject to the CBA's mandatory arbitration provisions, and concluded that GM did not violate Doc. 13. *Id.*, at p. 4.

For these reasons and those stated in my earlier letter dated March 19, GM respectfully reiterates its request for the voluntary dismissal of the Complaint, with prejudice. We look forward to hearing from you by 4 p.m.

Sincerely,

Beth Herrington

c: Philip A. Miscimarra, Esq. (via email)
Allison N. Powers, Esq. (via email)
Joyce Goldstein, Esq. (via email)
Jeffrey D. Sodko, Esq. (via email)
William J. Karges, III, Esq. (via email)

EXHIBIT 1

Policy

EMPLOYEE GRIEVANCE COMPLEX No. 22206 C

Dept. Complex Date 12/4/18 Time 12:00 AM PM

Nature of Grievance: Charge mgt. w/ direct violation of the GM-UAW MA specifically doc 10, doc 13, doc 16, doc 60, App K + App L but not limited To These. GM has broken it's commitments + Failed to comply w/ the intent of the plant closing Moratorium in doc 13.

Employee Print _____ Signed _____

GMIN (Required) _____ District No _____

Committeeman Print _____ Signed _____

Reported to _____ GMIN _____

Disposition: The union demands That GM honor it's commitment + continue Production of the Chevy Cruze D2LC AT The Lordstown Complex

Signed	Grievance Satisfactory Settled	Referred to:
	☐ Yes ☐ No	

Date _____ Time _____ AM PM

Disposition:

Signed	Grievance Satisfactory Settled	Referred to:
	☐ Yes ☐ No	

Date _____ Time _____ AM PM

Disposition:

Signed	Grievance Satisfactory Settled	Referred to:
	☐ Yes ☐ No	

Original – UAW Canary – Supervisor Blue – Labor Relations Pink – Employee

LT0002-C (rev. 0518)

CMS 394982

EXHIBIT 2

GM0730 REV. 9/99

EMPLOYEE GRIEVANCE No.C 1098830

Dept. 80 **Date** 11-28-18 **Time** 7:55 **A.M.** / **P.M.**

Nature of Grievance Charge Mgt with violation of Document 13 of NA. Mgt has announced the idling of Detroit-Pamtrack. The Union demands this plant stay active.

Signed _____ **SS#** _____

Committeeman M. Kc Plant

Reported to Kelsey Firek **Foreman**

Disposition by Foreman Charge and demands denied.

11/28/18

Date _____

Grievance Satisfactorily Settled	Referred to
NO	1 1/2

EXHIBIT 3

OFFICE OF THE UMPIRE

DECISION V-4

UNITED AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA
Local Union No. 653

and Appeal Case V-1

GENERAL MOTORS CORPORATION
CHEVROLET-PONTIAC-CANADA GROUP
FIERO PLANT
Pontiac, Michigan

Arbitrability; Claim of Plant Closure; Cessation of Product Line; Application of Document 13.

Grievance No. 509134

"Charge management with violation of UAW/GM National Agreement. Management closed CPC Pontiac Fiero Assembly Plant. Demand employees returned to work and/or made whole under all provisions of the National and Local Agreements."

OPINION OF THE UMPIRE

The grievance considered herein presents a matter of monumental importance to the parties. It places at issue the job rights of well over 1,000 individuals as well as the contractual propriety of their layoff by the Corporation. More specifically, Grievance No. 509134 charges that the curtailment of the production of the Fiero automobile and the resultant layoff of employees assigned to that effort violated Document No. 13 entitled "Plant Closing Moratorium." The Corporation asserts the grievance is not arbitrable but if found to be subject to the jurisdiction of the Umpire it should be dismissed for lack of a contractual violation.

The chronology of the events that now bring the parties before the Umpire began in May of 1982 with receipt of final corporate approval to

fund the construction of a mid-engine, two-seat commuter car to be known as the Pontiac Fiero. The Fiero was conceived and designed to penetrate a specialized market composed of young singles and households in which both the husband and wife are employed. It was determined that the Fiero would be produced at but one location, the closed Fisher Body - Pontiac Assembly Plant located adjacent to the Pontiac Motor Division complex in Pontiac, Michigan.

The Fisher Body - Pontiac Plant and the Pontiac Motor facility had historically been populated by two separate bargaining units, each composed of UAW represented employees. With the startup of Fiero production, the former Fisher Body - Pontiac Plant was staffed with active and laid off employees from both the former Fisher Body - Pontiac operation and the Pontiac Motor Division complex. It may further be noted that within the grounds of the Fisher Body - Pontiac facility was located a powerhouse that serviced both that plant and the Pontiac Motor Division facility. The employees who manned the powerhouse were formerly assigned to the Fisher Body - Pontiac bargaining unit but in July of 1982 they were placed in a new bargaining unit created to represent employees of the recently initiated Fiero project. Nevertheless, the powerhouse continued to service both the Pontiac Motor complex and the Fiero plant.

Following the expenditure of some 130 million dollars to modernize and retool the former Fisher Body - Pontiac Plant, production of the Fiero began at an annualized sales rate for the 1984 model year in excess of 100,000 units, a volume that represented a 53% share of the designated market. In that year, the plant operated with two shifts producing 30.4 jobs per hour, with a peak employment of 2,567 workers. Unhappily, however, during the 1985 model year the share of the Fiero in the low/mid-sport market segment fell to 35%, a trend that subsequently accelerated. Thus, in the l986 model year only 77,000 units were sold. This reduced volume caused the assembly line rate to be adjusted to 22 jobs per hour and at the same time 463 employees were placed on indefinite layoff.

In the l987 model year, sales of the Fiero shrank to only 50,000 units representing but 18% of the targeted market segment. This resulted in the removal of an entire shift, an adjustment of the line rate on that single shift to 30.4 jobs per hour and the layoff of an additional 674 employees. The inexorable erosion of sales penetration continued into the 1988 model year, when annualized sales dropped to approximately 26,000 (representing approximately 25% of the Fiero plant capacity) and a market share of but 14%. Inevitably, management determined that the Fiero plant could not continue to be operated on an economically feasible basis and as a consequence further production of the Fiero automobile was fiscally unsound.

On March 1, 1988, the Corporation announced that production of the Fiero would be discontinued at the end of the 1988 model year. In the announcement of that date, Vice President and Group Director C-P-C

Operations David D. Campbell stated, "As a result of the discontinuance of the Fiero, I regret having to inform you that our plans call for the idling of the Fiero plant at the end of the current model year. Vehicle build out is expected to be completed by September 1, 1988 . . . I also want to emphasize that this is not a plant closing. We are idling the plant because of the discontinuance of the product produced here and we will be looking for other work for you . . . Currently, we`re down to 120 cars per day - - 15 jobs an hour on one shift. We just cannot justify continuing the product line."

The Corporation and the UAW executed a letter of understanding on March 30, 1988 that addresses the impact of the GM-UAW SUB Plan and GIS Program on the employees affected by the then pending shutdown of operations at the Fiero plant. In relevant part, that document states the announcement of the Corporation that the plant "would be idled indefinitely" would be construed as "(an indefinite long-term discontinuance without a projected date of resumption) of total production operations" as that phrase appears in the definition of a "Plant Closing" found at Paragraph W-1 of Section 19 of the Guaranteed Income Stream Benefit Program (GIS). The letter of understanding of March 30, 1988 further recited that although a relatively small number of Fiero bargaining unit employees would remain on duty at the powerhouse, it was agreed, "without establishing precedent," that the "situation involving the Fiero plant's long-term discontinuance of total production operations will be considered as `constituting a local Bargaining Unit' ¢so that¦ the Fiero plant ¢thereby¦ satisfies the requirements of the `Plant Closing' definition as set forth in both the 1987 GM-UAW SUB Plan and GIS Program." A few days later, an internal UAW communication recognized that because some Fiero bargaining unit employees remained in service at the powerhouse, to extend GIS Program benefits to all eligible bargaining unit members required "a special agreement with General Motors because technically speaking all of the bargaining units must be on layoff with no date of return."

The employees at Fiero thereafter received a series of joint bulletins announcing various support and retraining programs. These bulletins were dated April 21, May 30 and June 30. 1988 and they were signed by both the then bargaining unit Plant Chairman and the Plant Manager. Each such communication characterized the status of the Fiero plant following the cessation of production as an "idling."

The dark day of the cessation of the production of the Fiero automobile was August 16, 1988. On that date, those members of the bargaining unit still at work were laid off except for 46 employees assigned to operate the powerhouse and an additional handful of employees required to oversee the maintenance of the premises. Three days later, the grievance that now brings the parties before the Umpire was filed.

DISCUSSION BY THE UMPIRE

It is necessary to first respond to the contention of the Corporation that Grievance No. 509134 raises issues which are not subject to the grievance procedure and are therefore not arbitrable. In resisting the jurisdiction of the Umpire to hear and dispose of Grievance No. 509134, the Corporation directs attention to Section III of the Job Opportunity Bank-Security Program (JOBS) and more specifically Paragraph 11 of Section III.

The JOBS Program (Appendix K to the National Agreement) was first negotiated in 1984. Section III, Paragraph 11 of the 1987 version recites, as it did then, "Only those matters governing the size of the active workforce, the Employee Development Bank or the SEL; or governing
the treatment of an employee assigned to or impacted by the Bank as set forth in Attachment A to this Memorandum of Understanding will be subject to the Grievance Procedure." Appendix K further provides that all other unresolved complaints are to be referred to the joint National
JOBS Committee. The Corporation states the present grievance puts the JOBS Program and its application to the Fiero plant at issue and under the foregoing provision the matters raised therein have been specifically withheld from the jurisdiction of the Umpire. In support of that view, two arbitration decisions involving comparable language negotiated by the Corporation with a labor organization other than the UAW are cited. It is to be noted, however, that the first such award (dated March 18, 1987 and signed by Lawrence T. Holden, Jr.) did not involve potential Secured Employment Level (SEL) adjustments as does the
present dispute and the second (dated November 18, 1988 over the signature of James M. Harkless) concerned a situation entirely different
from that at the Fiero plant.

Appendix K (the JOBS program) was revisited and expanded during the 1987
negotiations. A specific reference to Document No. 10 was inserted at Section I, Paragraph D(1). It is also a reality that a violation of Document 13 would require a repopulation of the SEL Bank. As noted, the
size of the SEL is subject to the jurisdiction of the Umpire. At the Fiero plant, a closure in violation of the National Agreement would necessarily trigger SEL Bank adjustments. Document 10 and Document 13, both necessary to a disposition of Grievance No. 509134, are thus put at
issue. It necessarily follows that Grievance No. 509134 has standing in
the grievance procedure and as a consequence is subject to disposition by the Umpire. Grievance No. 509134 is arbitrable.

The Union here charges a violation of the Plant Closing Moratorium negotiated by the parties in 1987 and affixed to the National Agreement as Document No. 13. Document No. 13 incorporates a pledge by the Corporation not to "close, beyond those which have already been identified, any plant, constituting a bargaining unit under the Agreement." The sole stated exception to that pledge, i.e., "conditions
. . . beyond the control of the Corporation, e.g., act of God" is

admittedly not applicable here. The decision to discontinue the manufacture of the Fiero automobile was deliberate on the part of the Corporation and clearly a judgment within its control and managerial discretion. If the result was that the Fiero plant was "closed" within the meaning of that term as used in Document 13 there has occurred a violation of the commitment made therein to the Union and its members.

The Union argues the Fiero plant has been closed within the commonly accepted understanding of that term established in 1982 when the Guaranteed Income Stream Benefit Program (GIS) was first negotiated. Section 19, Paragraph W-1 of the Supplemental Agreement covering the Guaranteed Income Stream Benefit Program defines a plant closing as "the
permanent discontinuance (or an indefinite long-term discontinuance without a projected date of resumption) of total production operations at a Company plant constituting a local Bargaining Unit." In the eyes of the Union, this is precisely what has occurred at the Fiero plant where the production line has been stilled, no product is being produced, certain items of equipment have been made available to other GM plants and there is no prospect of a resumption of operations. The Union is unwilling to accept the statement of the Corporation that the plant is "idled" rather than closed and it particularly directs attention to the fact that during the 1987 negotiations the Corporation was unable to obtain an exception to the Plant Closing Moratorium to be applicable to "volume-related reasons attributable to market conditions." It is said that pursuant to the terms of Document 13 the workers at Fiero should not have been laid off and the Corporation thereby violated the National Agreement.

An analysis of the intent and meaning of the phrasing of Document 13, the Plant Closing Moratorium, must look not only to the history of the negotiation of that document be equally to the history of the negotiation of related benefit plan provisions, as well as the conduct of the parties in response to those contractual commitments. Indeed, the parties have adopted just such an approach throughout the presentation of their evidence and arguments in this proceeding. For example, as noted the Union looks to the GIS Program for a plant closing
definition that includes an indefinite long-term discontinuance of operations without a projected date of resumption, clearly the circumstance at the Fiero plant. On the other hand, the Corporation invokes the dispensation set forth in the JOBS Program permitting a layoff of employees in response to "volume related declines attributable
to market related conditions." In this regard, the Corporation asserts what is apparent, i.e., the cessation of the manufacture of the Fiero automobile and the resultant shutdown of the assembly line at the Fiero plant were actions necessitated by the economic realities of an accelerated decline in sales attributable to market related conditions directly impacting the economic viability of the Fiero product. Furthermore, Section I, Paragraph D(1) of Appendix K cites Document No. 10 wherein it is stated that employment reductions are permissible where
market-related conditions cause a volume decline, as when customer preference motivates the purchase of one vehicle over another or where the manufacture of a product is discontinued following a decline of sales of "A new U.S.-built General Motors vehicle." What is the proper

balance between these apparently conflicting collectively bargained constraints? Put another way, how can Appendix K and Document No. 13 be reconciled? That question is put at issue by Grievance No. 509134. It becomes the duty and obligation of the Umpire to respond.

In 1982, the parties first negotiated the Guaranteed Income Stream Benefit Program (GIS) as one element of their effort to promote employment stability and avoid layoffs. The GIS Program provides a guaranteed minimum income, health care and life insurance coverage package for eligible long-service employees laid off subsequent to March 1, 1982. The March 1, 1982 effective date was specifically set to extend the benefits of the plan to employees theretofore laid off at the South Gate and Fremont, California vehicle assembly plants. Those two facilities were then subject to an indefinite long-term discontinuance (without a projected date of resumption) of total production operations. This circumstance was designated as a "plant closing" in order to bring the affected employees under the umbrella of the GIS coverage. Further, the GIS definition of "plant closing" is specifically stated to be applied only as the term is used therein. No intent has been shown to attach this same meaning to Document 13 negotiated some five years later.

It is nevertheless a reality that the definition of "plant closing" as set forth in the 1982 GIS Benefit Program was retained in 1984 and again included in the GIS plan following the 1987 negotiations. Significantly, however, on March 30, 1988 the parties recognized that the GIS benefit program would not be applicable to the Fiero plant following shutdown at the end of the 1988 model year because a relatively small number of employees from the Fiero bargaining unit would remain at work staffing the powerhouse and thus a special undertaking was necessary to extend the GIS benefits to those placed on layoff.

The entire package of job and income security benefits negotiated by the UAW at GM does not end with the Guaranteed Income Stream Benefit Program. Principal elements in the full effort to provide job security (in addition to the GIS Plan) are the Job Opportunity Bank-Security Program (JOBS), Document No. 10 and, of course, the Plant Closing Moratorium set forth in Document 13. On October 8, 1987, the parties jointly published a booklet that set forth the precise terms of the JOBS Program (Appendix K) along with selected explanatory comments. Those comments include such statements as "It is permissible for active employment to be beneath the SEL due to the layoffs described in ¢Section I, Paragraph D(1) -volume related declines attributable to market related conditions¦," "Employes within the SEL will be protected from layoff for any reason other than those for which job security is excluded under Paragraph I(D)," "for the life of the current Agreement, no employe within the SEL will be laid off as a result of any reason other than those for which job security is excluded in Paragraph I(D)."

Whatever may be the proper application of Document No. 13 (The Plant Closing Moratorium), it is clear that the negotiated intent of the JOBS Benefit Program is to permit the layoff of employees in response to volume declines attributable to market related conditions such as those that caused the demise of the Fiero.

In addition to the adoption of the GIS Program, the 1982 negotiations included discussions of plant shutdowns and the adoption of a moratorium on plant closings that came to be identified as Document No. 91. In that commitment, the Corporation agreed not to close, beyond those for which announcements had already been made, any plant constituting a local bargaining unit as a result of outsourcing the components manufactured in that facility. Specifically exempted, however, from the "Outsourcing-Moratorium on Plant Closings" were market driven volume declines. Special treatment was further provided the situation at the Fremont and South Gate plants, facilities that had been closed because of declining product sales. In Document No. 96, the Corporation acknowledged the indefinite layoff of employees from those two facilities with "no immediate opportunity to reopen." It was stated, however, that if market conditions were to improve, an opportunity might arise to resume assembly operations in the two plants. The Union argues Document No. 91 and Document No. 96 demonstrate that in 1982 the parties recognized that a plant could be "closed" even though some employees continued to perform non-production work after a shutdown of the production line. There exists, however, an equally plausible interpretation of these two documents. They appear to recognize (as did Document No. 18 also negotiated in 1982) a distinction between a "closed" plant and a facility where production is discontinued as a result of declining product sales but with at least some hope that changing market conditions would permit the resumption of production of the same or a different product.

Document No. 91 was replaced during the 1984 negotiations with the Job Opportunity Bank-Security Program (JOBS) affixed to the National Agreement as Appendix K. The JOBS Program as initially negotiated afforded employees with one or more years of seniority protection from layoff suffered as a result of four different types of management action, i.e., the introduction of technology, outsourcing, negotiated productivity improvements and consolidations or transfers of work where there is a loss of job content. Employees who became excess as a result of one of those events were placed in the Employee Development Bank rather than being subject to layoff. Local JOBS Committees were established at each location as well as a National JOBS Committee. One duty of the National Committee was to determine the location of employment development banks where they exist at "a closed plant." Under the 1984 Jobs Program, the closure of the United Delco Warehouse in Atlanta, Georgia took place in May of 1985 and the bank was moved to another location only after all bargaining unit work at Atlanta had ceased and the bargaining unit was dissolved, again not a situation where the possibility of a resumption of activity was recognized.

We come, finally, to the 1987 negotiations. In the course of those most recent bargaining sessions, the parties retained most of the features of the 1984 JOBS Program with the addition of a secured employment level concept (SEL). Appendix K (JOBS) to the 1987 National Agreement establishes secured employment levels at each bargaining unit and at Section I, Paragraph C provides that no employee will be laid off for any reason if such a layoff would cause the number of active employees in the unit to fall below the then current SEL. However, exceptions to this prohibition against layoffs were included at Section I, Paragraph D. The exception relevant to the present inquiry recites that layoffs are permitted in the face of "volume related declines attributable to market related conditions." This circumstance is clearly applicable to the termination of the Fiero project and the cessation of production at the one plant where the Fiero was manufactured.

The applicability of the permissible layoff situation described in Section I, Paragraph D(1) of Appendix K is reinforced by the reference therein to Document No. 10. Appendix K states the market driven volume decline exception will be honored in those situations described in Document No. 10. Examples then set forth in Document No. 10 are "market related conditions" arising out of customer preference of one vehicle over another and "product discontinuance." Again, this was the circumstance at the Fiero plant.

The effort of the Union to extend those job security protections available to its membership went beyond the construction of the JOBS Program and the terms of Document No. 10. The 1987 negotiations also saw the adoption of a revised plant closing moratorium set forth as Document No. 13. In the course of the negotiation of Document No. 13, the Corporation sought to extend the plant closing exception applicable to the obligation not to lay off employees below the then current SEL. The Union resisted any reference to such an exception in Document No. 13 and the Plant Closing Moratorium as ultimately adopted permits an exception only in the event of conditions beyond the control of the Corporation, such as an act of God. The Union argues this demonstrates Document No. 13 prohibits the layoff of employees when production ceases as a consequence of a product discontinuance or a market driven volume decline. To adopt that argument, however, would require that the Umpire ignore the clear understanding expressed in Appendix K and Document 10 that volume related declines attributable to market conditions resulting in a product discontinuance permit employee layoffs. The only way in which these two apparently conflicting contractual obligations may be harmonized is to limit the application of Document No. 13 to plants announced by the Corporation to be closed and plants otherwise shown to be "closed" within the contemplation of the common understanding of the parties. The Fiero plant does not meet these criteria. The Corporation has yet to announce Fiero is "closed." It remains in a level of maintenance sufficient to permit the acceptance of a new product or

activity, there remains a thread of plant bargaining unit activity and an intent to abandon any thought of the placement of future bargaining unit work in the facility has not been demonstrated even though some equipment was made available to other GM plants prior to shutdown on August 16, 1988. In sum, the layoff of employees at the Fiero plant did not constitute a violation of Document No. 13 but rather represented permissible action specifically anticipated by Appendix K and Document No. 10.

The Union contends Document No. 13 should be made applicable to the shutdown of production at the Fiero plant because the letter of understanding executed by the parties on March 30, 1988 characterized the situation as "(an indefinite long-term discontinuance without a projected date of resumption) of total production operations" and thus a "closed" plant within the meaning of that definition as set forth at Section 19, Paragraph W-1 of the Guaranteed Income Stream Benefit Plan. It is to be noted, however, that by the very terms of the GIS Plan this definition of a plant closing is limited to a test of the applicability of that program and no other. The same may be said of the reference to the Fiero situation as a "closed plant" in a corporate memo (Pen 89-8) dated February 7, 1989. The reference therein is directed to Pension/Retirement Administrators and lacks the utilization of the term more common to collective bargaining phraseology.

The Union further notes that the term "idled" with reference to a plant with dormant production activity was not employed during the 1987 negotiations. The record made available to the Umpire conclusively establishes, however, that following the March 1, 1988 announcement that production would be discontinued at the Fiero plant, the then Chairman of the UAW Plant Committee and the Plant Manager referred to the "idling" of the facility in joint memos distributed to all employees on April 21, May 30 and June 30, 1988. Additionally, the March 30, 1988 letter of understanding refers to the Fiero plant as "idled." While the testimony at arbitration regarding what was said during the 1987 negotiations about the permissible treatment of employees laid off in a Fiero type situation is conflicting, these references to "idling" and subsequent public statements by officials of the Union then in office indicate an understanding that some hope for a return of production to the Fiero plant was entertained so that the layoffs imposed at the Fiero plant were contractually permissible.

The Union is correct when it states the Corporation should be held to its pledge not to "play with the language" when designating plants as either idled, subject to possible reopening, open because a small segment of the bargaining unit remains in existence, or closed. The impact of any such action upon the job security, income maintenance and other benefits won for its membership at the bargaining table requires the enforcement by the International Union of strict compliance with the constraints of all applicable contractual commitments made by the Corporation. In the case of the Fiero plant, the Corporation has

complied with those commitments. It is important to note, however, that this response to Grievance No. 509134 makes no judgement regarding the contractual propriety of what has occurred at either the Framingham plant, the Leeds plant or any other location where the Union has protested the layoff of bargaining unit members. Each such circumstance must be analyzed against its own factual background. Any grievance appealed to the Umpire is entitled to no less than a full hearing on its own merits.

DECISION OF THE UMPIRE

1. Grievance No. 509134 is arbitrable.

2. The Corporation did not violate the National Agreement or Document No. 13 when it laid employees off following the cessation of production at the Fiero assembly plant.

3. Grievance No. 509134 is denied.

Dated: March 26, 1990

THOMAS T. ROBERTS, Umpire

Herrington, Beth

From: Richard L. Stoper Jr <rstoper@ggcounsel.com>
Sent: Thursday, March 21, 2019 2:53 PM
To: Herrington, Beth
Cc: Miscimarra, Philip A.; Powers, Allison N.; Joyce Goldstein; jsodko@uaw.net; wkarges@uaw.net
Subject: RE: UAW v. General Motors LLC; U.S. District Court, NDOH; Case No. 4:19-cv-00420-BYP

[EXTERNAL EMAIL]
Ms. Herrington:

The UAW will not agree to voluntarily dismiss the Complaint. We do not believe the Judge's standing order allows the Company to unilaterally dictate a time frame for our response. We would be happy to stipulate to an extension of time for you to file your motion to allow for a reasonable exchange of information.

However, I can say in response to your letter that Document 13 disputes are not within the powers of the arbitrator. The Arbitrator in the case you cite took jurisdiction over that dispute based on contract language that no longer exists. The grievances you provided to us were filed by the local union, not the International Union. One involves a plant that is not involved in the lawsuit. The other will be withdrawn by the local union in the morning.

Richard L. Stoper, Jr.

From: Herrington, Beth [mailto:beth.herrington@morganlewis.com]
Sent: Thursday, March 21, 2019 1:34 PM
To: Richard L. Stoper Jr <rstoper@ggcounsel.com>
Cc: Miscimarra, Philip A. <philip.miscimarra@morganlewis.com>; Powers, Allison N. <allison.powers@morganlewis.com>; Joyce Goldstein <jgoldstein@ggcounsel.com>; jsodko@uaw.net; wkarges@uaw.net
Subject: RE: UAW v. General Motors LLC; U.S. District Court, NDOH; Case No. 4:19-cv-00420-BYP

Thank you for your email. Please see the attached letter in response.

Beth

Beth Herrington
Morgan, Lewis & Bockius LLP
77 West Wacker Drive | Chicago, IL 60601
Direct: +1.312.324.1445 | Main: +1.312.324.1000 | Cell: +1.312.543.8291 | Fax: +1.312.324.1001
beth.herrington@morganlewis.com | www.morganlewis.com
Assistant: Rhoda Morris | +1.312.324.1157 | rhoda.morris@morganlewis.com

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From: Richard L. Stoper Jr <rstoper@ggcounsel.com>
Sent: Wednesday, March 20, 2019 2:02 PM
To: Herrington, Beth <beth.herrington@morganlewis.com>
Cc: Miscimarra, Philip A. <philip.miscimarra@morganlewis.com>; Powers, Allison N. <allison.powers@morganlewis.com>; Joyce Goldstein <jgoldstein@ggcounsel.com>; jsodko@uaw.net; wkarges@uaw.net
Subject: RE: UAW v. General Motors LLC; U.S. District Court, NDOH; Case No. 4:19-cv-00420-BYP

[EXTERNAL EMAIL]
Ms. Herrington:

I am writing in response to your March 19, 2019 letter requesting that the International Union, UAW, voluntarily dismiss, with prejudice, the Complaint in the above-referenced action.

It is my understanding that this is the first time the Company has argued that Document 13 issues are within the powers of the umpire. If you could elaborate on the Company's position, it would help us provide a response. In addition, please provide me copies of the two grievances referenced in your letter. Please provide your response by the end of the day on Thursday, March 21. After I receive this information, I will consult with my client and provide you with a detailed response on or before Monday, March 25, 2019.

Richard L. Stoper, Jr.

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From: Morris, Rhoda [mailto:rhoda.morris@morganlewis.com]
Sent: Tuesday, March 19, 2019 2:55 PM
To: Richard L. Stoper Jr <rstoper@ggcounsel.com>
Cc: Miscimarra, Philip A. <philip.miscimarra@morganlewis.com>; Powers, Allison N. <allison.powers@morganlewis.com>; Joyce Goldstein <jgoldstein@ggcounsel.com>; jsodko@uaw.net; wkarges@uaw.net; Herrington, Beth <beth.herrington@morganlewis.com>
Subject: UAW v. General Motors LLC; U.S. District Court, NDOH; Case No. 4:19-cv-00420-BYP

Dear Mr. Stoper, please see the attached letter per Beth Herrington's request. Sincerely, Rhoda

Rhoda Morris
Legal Secretary
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Assistant to: Deborah S. Davidson, Beth Herrington, Lauren Groebe, Heather Nelson, Alyse R. Fischer